

COLORADO DEPARTMENT OF REGULATORY AGENCIES  
OFFICE OF POLICY AND RESEARCH

HOME HEALTH SERVICES  
PILOT PROGRAM  
ADVISORY COMMITTEE

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2002 SUNSET REVIEW



# STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES  
Office of the Executive Director  
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Bill Owens  
Governor

October 15, 2002

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Home Health Services Pilot Program Advisory Committee. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2003 legislative committees of reference. The report is submitted pursuant to section 2-3-1203, of the Colorado Revised Statutes (C.R.S.), which states in part:

*The department of regulatory agencies shall conduct an analysis and evaluation of the performance of each division, board, or agency or each function scheduled for termination under this section. The department of regulatory agencies shall submit a report containing such analysis and evaluation to the office of legislative legal services by October 15 of the year preceding the date established for termination.*

The report discusses the question of whether there is a need for the continuation of the advisory committee created pursuant to Article 4 of Title 26, C.R.S. and the effectiveness of the advisory committee in carrying out the intent of the statutes.

Sincerely,

A handwritten signature in black ink that reads "M. Michael Cooke".

M. Michael Cooke  
Executive Director

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## **Background**

### *The Sunset Process*

The Home Health Services Pilot Program Advisory Committee (Committee), created in Article 4 of Title 26, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2003, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the advisory committee pursuant to section 2-3-1203(2)(b)(III), C.R.S.

The purpose of this review is to evaluate the performance of the Committee and to determine whether it should be continued. DORA's analysis and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

### *Methodology*

Colorado law mandates that DORA review certain statutorily required information, including the names of the advisory committee members; the revenues and expenditures for the current and prior fiscal year, including per diem and travel costs; dates of meetings, including the number of members present at each meeting; the committee's proposals with associated outcomes; and the committee's reasons as to why it should be continued.

### *History of the Advisory Committee*

In 1994, the General Assembly directed the Department of Health Care Policy & Financing (HCPF) to conduct a pilot program concerning home health services for the disabled community. An amendment to the Medicaid Omnibus Bill, SB 94-091, ordered the Home Health Services Pilot Program (Program) to determine the feasibility and cost-effectiveness of modifying and expanding home health care services.

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Under the Program, home health aides would be trained to provide specific nursing services in the disabled person's home, school, work site, day treatment center and other locations. Services that were provided in nursing facilities, intermediate care facilities for the mentally retarded and hospitals were excluded from the program.

The legislative intent was to give as much independence as possible to the clients while continuing to work within the current system of regulation. The Home Health Services Pilot Program Advisory Committee (Committee) was created in Article 4 of Title 26 of the Colorado Revised Statutes.

The concept for the Program was developed by Atlantis-ADAPT (American Disabled for Attendant Programs Today), an advocacy group for disabled citizens. In addition, the Program was supported by the other groups that would be involved in it: the Department of Health Care Policy & Financing (HCPF), the Colorado Association of Home Health Agencies and the Colorado Nurses' Association. The legislation required the executive director of HCPF to appoint the nine-member Committee that would help develop and implement the Program. The Committee was to be repealed July 1, 2000. Prior to the scheduled repeal, the Committee underwent a sunset review.

The Committee was selected and met monthly or bimonthly from September 1994 through April 1995. The Program was designed during this period, and an application for a Medicaid research and demonstration waiver from the federal government's Health Care Financing Administration (HCFA) was submitted in 1995. Technicalities involved in obtaining the waiver took an extended period of time, and it was not granted until 1998.

While waiting for the waiver to be granted, the Committee developed regulations for the pilot and submitted them to interested groups for review. These groups included the Colorado Cross Disability Coalition, the Long-Term Care Advisory Committee, the Medicaid Advisory Committee and the Home Health Agency Advisory Group. Revisions were made based on the concerns and recommendations expressed by the groups. Also during this time period, the Committee finalized the eligibility criteria for participants in the Program and established the provider requirements and the process by which providers would be designated. Additionally, the Committee submitted to HCFA a list of nursing functions that could be delegated and guidelines under which selected tasks are delegated.

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In 1998 the Committee presented proposed rule changes regarding the Program to the Medical Services Board. Among the issues addressed were confidentiality, an enrollment and disenrollment plan, a grievance procedure, a process for appeal, and a marketing and education plan.

In the period of time between the Committee's formation and the approval of the waiver, an issue related to the risk involved in the concept of the Program itself emerged. The contrast was between the risk involved with the Program, whereby protective oversight for those in the Program would be continued by the agency, and that involved with a newer pilot program in which there is no agency back-up system and the risk is assumed by the client. The second pilot program, the Consumer-Directed Attendant Support (CDAS) pilot, would allow the client to manage his/her own attendant care. The funds that HCPF normally pays to home health agencies for attendant care would instead be provided directly to the participants in the CDAS program. Participants would be responsible for hiring their own aides and instructing the aides about their own needs. They would also be responsible for paying the aides and, if necessary, for firing them.

While the CDAS pilot was in the development stages, the Medicaid waiver (Waiver 1115) was approved by the Health Care Financing Administration for the Program. In 1999, HCPF issued a Request for Proposal (RFP) and circulated it to home health agencies. Only one response was received, and the applicant proved to be unqualified. Since that time, HCPF has not released another RFP and the Program has been in limbo.

Originally, the Committee was to be repealed on July 1, 2000. Its sunset review conducted in 1999 recommended extending the Committee until 2005, but the Senate changed the repeal date to 2003 to conform with SB 00-088, a bill concerning the Colorado Medicaid program that includes the CDAS pilot.

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## **Legal Framework**

The Home Health Services Pilot Program Advisory Committee (Committee), composed of persons impacted by the program, was created to provide input to the Department of Health Care Policy & Financing (HCPF) during the pilot program's development and implementation.

The executive director of HCPF appointed the nine members of the Committee, consisting of members representing the following groups:

- Advocacy groups representing persons with disabilities and the frail elderly.
- Medical assistance recipients who receive nursing services.
- Home health agency providers' association.
- Professional nurses' association.
- State Board of Nursing.
- Assisted living facilities.
- Department of Public Health & Environment.
- Medical Assistance Long-Term Care Advisory Committee.

The statute requires the executive director of HCPF to consult regularly with the members of the Committee in the development and implementation of the pilot program.

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## **Advisory Committee Description**

The Home Health Services Pilot Program Advisory Committee (Committee) met during 1994 and 1995 to design the pilot program and prepare the application for a Medicaid research and demonstration waiver from the Health Care Financing Administration. The waiver was completed and submitted in 1995. Approval of the waiver was not obtained until 1998, after which the Committee prepared and issued a Request for Proposal (RFP). The RFP was circulated to home health agencies, but it received only one response, which came from an unqualified applicant.

**Revenue/Expenditures.** Committee members did not receive compensation nor incur expenses for their participation on the Committee.

**Number of Meetings/Attendees** Table 1 shows the meeting dates and attendees from September 1994 through March 1999. There are no records of any additional meetings.

**Table 1  
Meeting Dates and Attendance**

<b>Meeting Date</b>	<b>Attendance</b>
9/16/94	14
9/30/94	10
10/14/94	7
10/28/94	10
11/18/94	12
12/2/94	12
1/13/95	10
1/20/95	10
2/17/95	8
3/17/95	6
4/28/95	6
12/19/97	6
1/30/98	8
2/25/98	9
3/4/98	20
4/1/98	9
12/3/98	8
3/18/99	4

**Proposals/Outcomes** As stated earlier, the Committee participated in developing the Program. The Committee's last accomplishment involved the RFP that was issued by the Department of Health Care Policy and Financing (HCPF). There have been no proposals from the Committee since then.



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## **Analysis and Recommendations**

***Recommendation – The Department of Regulatory Agencies recommends that the General Assembly allow the Home Health Services Pilot Program Advisory Committee to sunset, effective July 1, 2003.***

The Home Health Services Pilot Program (Program) sought to empower members of the disabled community with as much control over their attendant care as possible in a manner as cost-effective as possible. Under the Program, agencies would continue their protective oversight of the clients selected for participation, thus assuming the risk for their involvement.

Since the Program was first conceived and during the time it was being developed, a more innovative approach was created. The Consumer-Directed Attendant Support (CDAS) Pilot Program, wherein the client assumes the risk, has gained broad support and is expected to identify its first group of applicants by September 2002. While this has occurred, the Program has been at a standstill.

Home Health Services Pilot Program Advisory Committee (Committee) participants and staff from the Department of Health Care Policy & Financing (HCPF) concur that the basic concept of the Program is out-of-date. Candidates wanting to participate as clients in a pilot program giving them more control over their home health care want the CDAS pilot to advance, as it allows them broader powers and more independence.

The Program's concept seems to have given way to that of the CDAS pilot. It is not a certainty that CDAS will succeed, but there is a consensus of opinion that the Program and its Committee will not go forward and should be repealed.

Letters from the executive director of the HCPF and from a member of the Committee are found in Appendix C on page 11. Both recommend repeal.

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## **Appendix A – Sunset Review of Advisory Committees Statute**

### **2-3-1203 - Sunset review of advisory committees**

(1)(a) The general assembly hereby finds and declares that advisory committees are beneficial to government since they help involve private citizens in the daily operations of government and provide the government with a system for utilizing the expertise of its citizens. However, there has been no legislative supervision which would allow for the systematic review of such committees to ascertain which committees may have outlived their usefulness yet remain on the statutes through oversight or neglect and which committees may have failed to perform the functions for which they were created. To assure that previously created advisory committees received this supervision, the review and hearing provisions set forth in subsection (2) of this section and the schedule set forth in subsection (3) of this section were created in 1986, and repeal provisions were added to the existing statutory authorizations for such committees. To assure that newly created advisory committees are supervised and subjected to such a review, any advisory committee created on or after July 1, 1990, shall have a life not to exceed six years, and the statutory authorization for the committee shall contain a corresponding repeal provision. An advisory committee created on or after July 1, 1994, shall have a life not to exceed ten years, and the statutory authorization for the committee shall contain a corresponding repeal provision. The general assembly, acting by bill, may reschedule the review date for an advisory committee to a later date if such rescheduled date does not violate the ten-year maximum life provision. Newly created advisory committees shall be subject to the review provisions of this section.

(b) As used in this section, "advisory committee" means any advisory body, including but not limited to any commission, council, or board.

(2) (a) A legislative committee of reference designated pursuant to section 2-3-1201 shall consider whether to continue or to continue with modification any advisory committee which is scheduled to have its statutory authorization repealed and may recommend the consideration of a bill as it deems necessary to effect such continuation.

(b) (I) Each such advisory committee shall submit the following information to the department of regulatory agencies:

(A) The names of the current members of the advisory committee;

(B) All revenues and all expenditures, including advisory committee expenses per diem paid to members, and any travel expenses;

(C) The dates all advisory committee meetings were held and the number of members attending the meetings;

(D) A listing of all advisory proposals made by the advisory committee together with an indication as to whether or not each proposal has been acted on, implemented, or enacted into statute;

(E) The reasons why the advisory committee should be continued.

(II) All information required by subparagraph (I) of this paragraph (b) shall be for the then current fiscal year as well as the prior fiscal year and shall be submitted before July 1 of the year preceding the year in which the statutory authorization for the advisory committee is scheduled for repeal.

(III) The department of regulatory agencies shall conduct an analysis and evaluation of the performance of each division, board, or agency or each function scheduled for termination under this section. The department of regulatory agencies shall submit a report containing such analysis and evaluation to the office of legislative legal services by October 15 of the year preceding the date established for termination.

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(c) A legislative committee of reference designated pursuant to section 2-3-1201 shall conduct hearings for each advisory committee that submits the information required by paragraph (b) of this subsection (2).

(d) A bill recommended for consideration under this subsection (2) shall be introduced in the house of representatives in even-numbered years and in the senate in odd-numbered years.

(e) A bill recommended for consideration under this subsection (2) shall not be counted against the number of bills to which the sponsor is limited by any law or joint rule of the senate and house of representatives.

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## **Appendix B – Home Health Services Pilot Program Advisory Committee Statute**

### **26-4-529 - Home health services - pilot program - advisory committee - repeal.**

(1) The department shall conduct a pilot program to determine the feasibility and cost-effectiveness of using trained home health aides to provide specific nursing services to medical assistance recipients in:

- (a) The recipient's own residence;
- (b) Any other residence, other than a nursing facility, hospital, or intermediate care facility for the mentally retarded; or
- (c) Other sites including, but not limited to, schools, work sites, or day treatment centers.

(1.5) The department shall implement the pilot program no later than July 1, 1995. The department shall implement the program in a manner that is consistent with the "Nurse Practice Act" and with the provisions of article 38.1 of title 12, C.R.S., governing the regulation of nurse aides. Under the program, home health aides shall provide services under the supervision of registered nurses in accordance with section 12-38-132, C.R.S.

(2) The state department shall adopt rules as necessary for the implementation and administration of the pilot program. The department, in its rules, shall specify:

(a) The nursing services that may be provided to medical assistance recipients by home health aides;

(b) That a professional nurse is to determine whether a recipient's condition is appropriate for the services authorized by the rules based on an initial assessment of the client, that the professional nurse is to assess and monitor services provided to a recipient on an ongoing basis and provide ongoing instruction and assistance to a home health aide and intervention services for the recipient, as deemed appropriate by the professional nurse, and that the functions performed by the professional nurse are to be reimbursed as skilled nursing services under the pilot program;

(c) That the services authorized by the rules are to be provided as a routine part of a recipient's care;

(d) That the recipient is allowed to participate in decisions concerning the recipient's care;

(e) That the recipient may, at any time, refuse to participate in the pilot program without penalty;

(f) That participation in the pilot program by home health agencies, individual nurses, and individual home health aides is strictly voluntary; and

(g) That the supervising nurse has the authority to approve the delegation of functions to be performed by home health aides under the pilot program.

(3) (a) In order for the department to develop and implement the pilot program with sufficient input from persons impacted by the program, there is hereby created an advisory committee to be appointed by the executive director. The committee consists of nine members who represent the following populations:

(I) Advocacy groups representing persons with disabilities and the frail elderly;

(II) Medical assistance recipients described in subsection (1) of this section who receive nursing services;

(III) The home health agency providers association;

(IV) The professional nurses' association;

(V) The state board of nursing;

(VI) Assisted living facilities;

(VII) The department of public health and environment;

(VIII) The medical assistance long-term care advisory committee.

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(b) The executive director of the department, in the development and implementation of the pilot program, shall, on a regular basis, consult fully with the members of the advisory committee created in paragraph (a) of this subsection (3).

(c) (I) This subsection (3) is repealed, effective July 1, 2003.

(II) Prior to said repeal, the advisory committee shall be reviewed, as provided in section 2-3-1203 (3), C.R.S.

(4) The department shall contract with a public or private entity to conduct an independent evaluation of the pilot program. On or before October 1, 1996, and on or before October 1, 2002, the department shall provide written reports to the general assembly, based on the independent evaluation. The department shall include in the reports the independent evaluator's assessment of the cost-efficiency, which includes identifying any cost-savings to the medical assistance program and any other public benefits programs, benefit, impact on the quality of care and client outcomes, and impact upon recipients' ability to live independently as a result of the provision of nursing services to medical assistance recipients by home health aides. In addition, the department shall include in the reports recommendations for implementation of any model or proposed program modification.

(5) The executive director of the department is hereby authorized to accept on behalf of the state any grants or donations from any private source and any public moneys appropriated for the purpose of implementing this section.

(6) The pilot program shall terminate on July 1, 2003, unless extended by the general assembly.

(7) This section is repealed, effective July 1, 2003.

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# Appendix C – Letters Concerning the Sunset Review of the Home Health Services Pilot Program Advisory Committee

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## STATE OF COLORADO

### DEPARTMENT OF HEALTH CARE POLICY & FINANCING

1575 Sherman Street  
Denver, CO 80203-1714  
(303) 866-2993  
(303) 866-4411 FAX  
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Bill Owens  
Governor  
Karen Reinertson  
Executive Director

July 19, 2002

Bruce Harrelson, Director  
Office of Policy & Research  
Dept. of Regulatory Agencies  
1560 Broadway, Suite 1540  
Denver, CO 80202

Dear Mr. Harrelson:

I understand that you are conducting a sunset review of the Home Health Services Pilot Program, which is scheduled to repeal on July 1, 2003 (C.R.S. 26-4-529).

In 1994 the Department of Health Care Policy and Financing was directed to conduct the pilot program to determine the feasibility and cost-effectiveness of modifying and expanding home health care services for persons with disabilities. Under the program, home health aides would be trained to provide specific nursing services in the disabled person's home and in other locations.

An advisory committee was convened in accordance with the statutory requirements and met several times to design the project, which required a Medicaid research and demonstration waiver from the federal government. In 1998 the federal government granted the necessary waiver. The department released an RFP in 1999, but the only applicant proved to be unqualified.

The department did not release another RFP for the home health services pilot program. During the years waiting for federal approval, a newer concept was developed that is more applicable for our goals for the disabled community – increasing self-sufficiency, improving the quality of attendant care and lowering the cost to the state for providing attendant services. This concept, the Consumer-Directed Attendant Support Pilot Program, extends far beyond what the Home Health Services Pilot Program would have achieved and has been embraced by both the consumer community and the Colorado General Assembly.

In light of the greater interest in and utility of the Consumer-Directed Attendant Support Pilot Program, the Department of Health Care Policy and Financing does not intend to pursue the home health services pilot effort further. The department has no objection to sunsetting the Home Health Services Pilot Program and Advisory Committee.

Sincerely,

Karen Reinertson

"The mission of the Department of Health Care Policy & Financing is to purchase cost effective health care for qualified, low-income Coloradans"  
<http://www.chcpf.state.co.us>

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Mr. Bruce Harrelson  
Director Office of Policy and Research  
Department of Regulatory Agencies  
1560 Broadway, Suite 1560  
Denver, Colorado 80202

August 16, 2002

Dear Mr. Harrelson:

Per the request of Marilyn Davis of your staff, I am writing this letter regarding the Home Health Services Pilot Program Advisory Committee of 1994. It is my understanding that the legislation concerning the program is up for Sunset Review.

At that time I was the Program Administrator for the Community Based Programs (inclusive of Home Health and HCBS) of the Health Facilities Division (HFD) at the Colorado Department of Public Health and Environment (CDPHE). In this capacity I was a member of the original Home Health Services Pilot Program Advisory Committee. I have since retired from CDPHE and am writing this letter as an individual and not as a representative of HFD/CDPHE, the Home Care Association of Colorado or the Home Health Agency I currently work for.

After talking with Ms. Davis and reviewing her chronology of events concerning the Advisory Committee, it is my individual opinion that it would be appropriate to Sunset the committee. My reasoning is as follows; most of the original members of the committee are no longer working in the same capacity as they did in 1994. To my knowledge the committee has not met for years. There is currently SB 00-088 which is the Consumer-Directed Attendant Support Pilot Program which appears to attempt to provide the same services as the earlier program. My individual opinion would be to sunset the first committee, observe the current pilot program very closely, evaluate the effectiveness and if appropriate after the evaluation, consider using information from the first program with the 2<sup>nd</sup>.

If there are any further questions please feel free to call me at work, 303-765-2515 or home 303-355-7447.

Sincerely;



Peggy Waldon, RN  
5955 E. 10<sup>th</sup> Ave #107  
Denver, Colorado 80220

cc: Marilyn Davis